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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,748

03/30/2005

Berislav V Zlokovic

GRT/4061-32

1588

23117 7590 02/26/2009  
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EXAMINER

KOLKER, DANIEL E

ART UNIT

PAPER NUMBER

1649

MAIL DATE

DELIVERY MODE

02/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/529,748	<b>Applicant(s)</b> ZLOKOVIC ET AL.	
	<b>Examiner</b> DANIEL KOLKER	<b>Art Unit</b> 1649	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 09 February 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 6, 13, 16-18, 25, 29, 30 and 34.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
 12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 8/14/08  
 13. ☐ Other: \_\_\_\_\_.

/Daniel E. Kolker/  
 Primary Examiner, Art Unit 1649  
 February 20, 2009

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejections under 35 USC 112, first paragraph for lack of enablement commensurate in scope with the claims and lack of adequate written description are withdrawn in light of the amendments.

The rejection under 35 USC 112, second paragraph, is withdrawn in light of the amendments.

The rejection under 35 USC 102(b) as anticipated by Bouma is withdrawn in light of the amendments; Bouma does not teach administering human protein S to the patients recited in claim 6.

The rejection under 35 USC 102(e) as anticipated by Bertilsson is withdrawn in light of the amendments. The claims have been amended to require administration of human protein S. Claims which had previously been drawn to administration of human protein S were not rejected, as the reference does not explicitly teach administration of human protein S.

The rejection under 35 USC 103(a) over Hung is withdrawn in light of the amendments. The reference by Hung does not discuss treating brain injury neurotrauma or stroke as claimed.

Note the rejection under 35 USC 103(a) over Bertilsson in view of Hung is maintained. The rejection still applies to the amended claims, as the amendments incorporate limitations of claims which had previously been rejected.

Continuation of 11. does NOT place the application in condition for allowance because: The references by Bertilsson and Hung render obvious the methods of administering human protein S to human patients with stroke. Even if the references do not explicitly teach the particular effects of the protein upon administration which are recited in the claims, these will necessarily occur .